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the sale was not "made under this chapter" and was outside the jurisdiction of that Court. This view is confirmed by an examination of the terms of the decree of 1920 for arrears of rent, for the claim decreed is "on account of arrears of rent and cesses with interest in respect of khorposh *held by the defendants* in mauza Madan, Bidra, Rano and Chareya," and the decree is thus only apt to attach the interest of the defendants in the tenure, and is no sufficient warrant for a sale of the whole tenure under section 208.

Accordingly, their Lordships are of opinion that the jurisdiction of the Court is not excluded by section 214, as the sale under section 208 was *ultra vires*; and that, consequently, the incumbrances on the tenure were not affected.

Their Lordships will therefore humbly advise His Majesty that the decree of the High Court of the 17th January, 1929, should be affirmed, and that the appeal should be dismissed with costs.

Solicitors for appellant:—*H. S. L. Polak and Company.*

Solicitors of respondents:—*W. W. Bow and Company.*

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### PRIVY COUNCIL.

RAJA RAN BAHADUR SINGH

v.

NAGARSETH KASTURBHAI MANI.

On Appeal from the High Court at Patna.

*Chota Nagpur Incumbered Estates Act (VI of 1876), sections 11, 18—Scheme not contemplating Sale—Sale without fresh Scheme—Sale by Manager—Intervention of Commissioner and Revenue authorities.*

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\* PRESENT: Lord Tomlin, Sir John Wallis and Sir George Lowndes.

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Section 18 of the Chota Nagpur Incumbered Estates Act, 1876, as amended in 1909, prohibits a sale of part of an estate under the Act until a scheme has been approved by the Commissioner under section 11, but does not require a fresh scheme to be prepared and approved to justify a sale not contemplated in the approved scheme if in the opinion of the Commissioner and the Manager a sale is expedient in the interests of the estate.

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Section 18 requires that a sale shall be by the Manager, and upon such terms as he thinks fit, but a sale made by him on terms sanctioned by the Commissioner is not invalid because the Commissioner and the superior Revenue authorities have had a controlling voice in considering and negotiating the matter.

*Hukum Chand v. Ran Bahadur Singh* (1), distinguished.

Decree of the High Court affirmed.

Appeal (no. 125 of 1930) from a decree of the High Court (April 4, 1929) affirming a decree of the Additional Subordinate Judge of Hazaribagh (March 21, 1923).

The suit was instituted by the appellants against respondent no. 1 respondent no. 2, the Raja of Nawagarh, being afterwards added as defendant no. 2.

The main question for determination was whether a sale deed executed on March 9, 1918, by the Manager of the property of the Raja of Palganj appointed under the Chota Nagpur Incumbered Estates Act, 1876, was valid and binding upon the Raja.

The facts appear from the judgment of the Judicial Committee.

Both Courts in India held that the sale was valid.

1933. March 6, 7.—*De Gruyther, K.C.*, *Hyam* and *Champatrai Jain*, for the appellants.

*Dunne, K.C.* and *Wallach*, for respondent no. 1.

(1) (1924) I. L. R. 3 Pat. 625; L. R. 51 I. A. 208.

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The arguments for the appellant appear from the judgment here reported; counsels for the respondent no. 1 were not called upon.

March 30.—The judgment of their Lordships was delivered by—

SIR JOHN WALLIS.—The subject of this appeal is the Pareshnath Hill in the Hazaribagh District of Chota Nagpur, which has for many hundred years been held sacred by both branches of the Jain religion, the Swetambaris and the Digambaris, and has unfortunately been the subject in the last twenty years of no less than four suits, of which two, *Hukum Chand v. Ran Bahadur Singh*<sup>(1)</sup> and *Maharaj Bahadur Singh v. Seth Hukum Chand*<sup>(2)</sup>, have already been dismissed by His Majesty in Council affirming the decision of the Courts below, while the appeals in this and the remaining suit now await decision.

The present suit was instituted on June 24th, 1920, by the Raja of Palganj and the Digambaris, who had obtained from the Raja a permanent lease of the Hill on January 4th, 1919, to recover possession and mesne profits from the Swetambaris, in whose favour a deed of sale had been executed on March 9th, 1918, by the Manager of the Palganj estate under section 18 of the Chota Nagpur Encumbered Estates Act, 1876, on the ground that the sale was illegal, invalid and inoperative on eighteen grounds set out in paragraph 20 of the plaint. All these grounds were rejected by both the lower Courts, but before coming to them their Lordships will refer to the defendants' plea *in limine* that the suit was barred by reason of a compromise entered into in another suit.

On October 6th, 1917, the Commissioner of Chota Nagpur had sanctioned the sale of the Hill to the defendants under section 18 of the Act, subject to his approval of the sale deed. On January 4th, 1918, an

(1) (1924) I. L. R. 3 Pat. 625; L. R. 51 I. A. 208.

(2) (1925) 24 All. L. J. 100.

appeal by the Raja of Palganj, represented by the Manager, came on for hearing before the High Court of Patna from a decree of the Subordinate Court of Hazaribagh in a suit brought against him by the Raja of Nawagarh claiming an undivided half share of the Pareshnath Hill. On January 31st, the hearing of the appeal was adjourned at the suggestion of the Court with a view to a compromise, and on February 4th both parties filed a petition stating that the suit had been compromised on the terms that they should each of them dispose of their interests in the Pareshnath Hill to the Swetambaris on terms already settled, that all questions of ownership in the Hill should be left undetermined, and that the boundaries between the Hill and the Nawagarh estate should be demarcated. Under this compromise the Raja of Palganj's interest in the Hill was to be sold to the Swetambaris on the terms already sanctioned by the Commissioner.

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At the same time the Swetambaris who were not parties to the suit presented a petition agreeing to these terms. It was ordered to be recorded, and the petition was adjourned to allow of the conveyances being executed and the boundary demarcated. On February 26th the Raja of Nawagarh executed a permanent lease in favour of the Swetambaris, and on March 9th, as already stated, the Manager of the Palganj estate, pursuant to the sanction of the Commissioner of Chota Nagpur, dated March 4th, executed the deed of sale which is now in question. Finally, on November 19th, 1919, after the report of the demarcating officer had been received, the High Court passed a decree allowing the appeal in terms of the compromise petition and the map annexed to the decree.

On these facts the Subordinate Judge held at the trial that the sale and lease executed by the parties to the suit pursuant to the compromise were merged in the compromise decree and that therefore the sale could not be questioned in this suit. He accordingly

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dismissed the suit. The High Court, after calling for findings on the other issues which the Subordinate Judge had left undecided, held that the agreements for sale and lease were outside the scope of the suit, that the only terms within it were the agreement to leave the claims of the parties to the Hill unsettled and the provision for a demarcation of the boundary between the Hill and the Nawagarh estate, and that therefore the compromise decree could not be taken to have decided the question of the validity of the sale deed and was not a bar to the present suit. They proceeded to deal with the case on the merits, and held, agreeing with the finding of the second Subordinate Judge on the remaining issues, that the plaintiffs' suit failed.

Their Lordships have not heard the respondents' objections to the High Court's ruling as to the effect of the compromise, as after hearing the appellants' case fully argued, they considered it unnecessary to call upon the other side. They will therefore confine themselves to giving their reasons for agreeing with both the Courts below that the plaintiffs' suit fails upon the merits.

Their Lordships will first deal with two of the legal objections to the sale, that the terms of sale were not settled by the Manager *himself* but by the Revenue authorities, and that the sale was not effected in pursuance of the scheme required by the Act. The former objection, as pointed out by the High Court, was not specifically raised in the objections pleaded, and was probably suggested by the decision of this Board in *Hukum Chand's* case<sup>(1)</sup> which was not given until four years after the filing of the plaint. The Manager, however, gave evidence about it in 1928, when the case was remanded, and it has been dealt with by both the lower Courts.

(1) (1924) I. L. R. 3 Pat. 625; L. R. 51 I. A. 208.

Section 18 of the Act as amended in 1909 is as follows :—

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18. After a scheme has been approved by the Commissioner under section 11, the Manager shall, subject to the sanction of the Commissioner, have power,—

- (a) to demise by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the date of publication of the order under section 2, or
- (b) to sell by public auction or by private contract, and upon such terms as the Manager thinks fit, such portion of such property as may appear expedient,

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for the purpose of raising any money which may be required for the settlement of the debts and liabilities to which the holder of the property is subject, or with which such property or any part thereof is charged, or,

- (c) to borrow money, at such rate of interest as appears reasonable to the Board of Revenue,

for the aforesaid purpose or for the purpose of meeting the costs of such repairs and improvements of the property as appear necessary to the Manager and are approved by the Commissioner.

As regards the objection that the sale was not effected in pursuance of the scheme required by the Act, section 11 requires the Manager to prepare and submit to the Commissioner a schedule of debts and a scheme for the settlement thereof, and such scheme, when approved by the Commissioner, is to be carried into effect. The object of the Act being to save the estate from sales in execution at the suit of creditors, it was only natural that the power to mortgage or sell or borrow money subject to the sanction of the Commissioner should not come into force until the scheme for the settlement of the debts and liabilities of the estate had been approved. A scheme was drawn up in this case which provided for the liquidation of the debts out of income by the year 1918, but it proved quite unworkable, and, as stated in the Manager's final report, the bulk of the debts was eventually discharged out of the proceeds of the sale in 1918 which is the subject of this suit. In their Lordships' opinion section 18 only prohibits a sale until a scheme has been prepared and approved, and does not require the preparation of any further scheme to justify a

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sale which in the opinion of the Commissioner and the Manager may be expedient in the interests of the estate.

With regard to the objection that the sale and the terms thereof were not settled by the Manager but by the Revenue authorities, under section 18 the Manager is empowered to sell "by public auction or private contract, and upon such terms as the Manager thinks fit," but this power is to be exercised subject to the sanction of the Commissioner, all of whose orders and proceedings under the Act are subject to the supervision of the Board of Revenue, who may revise, modify or reverse them (section 21A of the Act as amended in 1909). In *Hukam Chand's* case<sup>(1)</sup> the Manager was not shown to have had any part in entering into the alleged contract for sale which was held to be invalid and the observations and judgment of the Board must be read with reference to that state of facts.

In the present case, according to the Manager's evidence, which has been accepted by both the lower Courts, an offer by the Swetambaris was communicated to him by the Deputy Commissioner, and, after full discussion, was submitted to the Commissioner with a recommendation that a sale would be preferable to a lease. The matter was most carefully considered by the Commissioner, the Board of Revenue and the Local Government, and on October 6th, 1917, after further negotiations with the Swetambaris a sale on certain terms was sanctioned by the Commissioner subject to his approval of the sale deed. The next thing was that in February, 1918, after consulting the Legal Remembrancer and the Secretary to the Board of Revenue, the Manager, as already stated, entered into the compromise which provided for a sale to the Swetambaris on the terms sanctioned by the Commissioner. The sale deed was then drawn up by a Calcutta firm of solicitors on the Manager's instructions, and after it had been sanctioned by the

(1) (1924) I. L. R. 3 Pat. 625; L. R. 51 I. A. 208.

Commissioner on March 4th, 1918, was executed by the Manager on March 9th, 1918. In their Lordships' opinion the Commissioner and the superior Revenue authorities, if they chose to intervene, were entitled to have a controlling voice in any sale under the Act, and a sale by the Manager on terms sanctioned by the Commissioner was a sale which satisfied the requirements of section 18. As observed by Ross, J., "It is idle to suggest that the Manager could or should have acted on his own responsibility, nor does the statute contemplate such a course. The provision requiring the sanction of the Commissioner lets in the negotiations pursued in this case, and such negotiations seem to be contemplated in the decision in *Hukram Chand's* case<sup>(1)</sup>. It cannot be said that the Manager is not a voluntary agent because the scope of his action is limited by the statute, and it seems to me that there is nothing in the correspondence to show that the Manager did not perform the part in this transaction which the statute assigns to him. As regards the Manager's position under the statute it is not immaterial to note that section 20 empowers the Commissioner to replace him at any time."

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The only other objection to which their Lordships think it necessary to refer is set out in paragraph 20(h) of the plaint as follows:—

"In that the said sale inclusive of mineral, jungle and all other rights of the plaintiff no. 1 therein for the inadequate sum of Rs. 2,50,000 and otherwise upon the terms contained in the said conveyance was an illegal and to the knowledge of the defendant, a *mala-fide* exercise, and in any event not a reasonable or *bona-fide* exercise of the statutory power of sale vested in the said Manager, and in fact the said sale was demonstrably injurious to the interest of plaintiff no. 1."

Both the lower Courts have arrived at concurrent findings, with which their Lordships see no reason to interfere, that these allegations are not made out, and that, on the contrary, the discretionary power of sale conferred by the statute would appear to have been

(1) (1924) I. L. R. 3 Pat. 625; L. R. 51 I. A. 208.



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exercised in the best interests of the estate and that it is not shown that any better price could have been obtained.

Their Lordships will therefore humbly advise His Majesty that the appeal fails and should be dismissed with costs.

Solicitor for appellants :—*Barrow, Rogers and Nevill.*

Solicitor for respondent no. 1 :—*H. S. L. Polak and Company.*

### PRIVY COUNCIL.

AMARENDRA MANSINGH

v.

SANATAN SINGH.

J. C.\*  
 1933.

April, 4.

On Appeal from the High Court at Patna.

*Hindu Law—Adoption—Widow's Power of Adoption—Death of natural Son unmarried—Son attaining over 20 years—Property not vested in Widow—Limits to exercise of Power—Religious Efficacy.*

A Hindu governed by the Benares school of the Mitakshara law was survived by an infant son and by a widow, to whom he had given authority to adopt in the event of the son dying. The son succeeded to the impartible zamindari held by his father, but died unmarried at the age of twenty years and six months. Thereupon the widow, the son's mother, made an adoption to his father. By a custom of the family females were excluded from inheriting. In a suit claiming inheritance against the adopted son :—

*Held*, that as the natural son had left no son to continue the line nor a widow to provide for its continuance by an adoption, the adoption by his mother was valid, although the zamindari was not vested in her, and although the son had attained the age above stated.

\* PRESENT: Lord Atkin, Lord Thankerton, Lord Macmillan, Sir John Wallis, and Sir George Lowndes.